?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 26.10.2018

*CORAM
THE HON-BLE MR.JUSTICE T.RAJA
and
THE HON-BLE MR.JUSTICE KRISHNAN RAMASAMY
+W.P.(MD) No.21920 of 2018
and
W.M.P.(MD) No.19847 of 2018

#K.Sasikumar ... Petitioner

Vs.

$The Executive Officer,
Thenkarai Town Panchayat,
Theni District. ... Respondent

PRAYER: The writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records pertaining to impugned notice issued by the respondent herein dated 01.10.2018 and quash the same as illegal.

!For Petitioner : Mr.J.Anandhavalli

^For Respondent : Mr.V.R.Shanmuganathan,
Special Government Pleader
for Mr.Muthu,
Additional Government Pleader
:ORDER

(Order of the Court was made by T.RAJA, J.)

This Writ Petition is directed against the impugned notice dated 01.10.2018 issued by the Executive Officer, Thenkarai Town Panchayat, Theni District on the ground that the Executive Officer, Thenkari Town Panchayat has no authority inasmuch as when he has no jurisdiction at all the impugned notice directing the petitioner to vacate the premises within 15 days time is liable to be set aside. More over, contending on the ground that no notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 was ever issued prior to the issuance of the impugned notice, the learned Counsel for the petitioner has also contended that the procedure contemplated under Section 5, 5(b) and 7 of the Act has not been followed while issuing the impugned proceedings. Again referring to an earlier order passed by this Court in the

petitioner-s previous Writ Petition (MD) No.18424 of 2018, she submitted that when the petitioner was issued with the similar notice dated 09.05.2018 by the very same Executive Officer, Thenkarai Town Panchayat, calling upon the petitioner to remove the encroachment made by petitioner in the form of residential house in Ooruni/Water body to the extent of 2 cents, Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents fairly conceded to the case of the petitioner that the Executive Officer of the Thenkarai Town Panchayat, Theni District has no jurisdiction whatsoever and further submitted that liberty be given to withdraw the previous proceedings dated 09.05.2018 issued by the Executive Officer, Thenkarai Town Panchayat and to reissue notice under Section 131(2) of the Tamil Nadu Panchayat Act, 1994. When the similar notice issued by the Executive Officer, Thenkarai Town Panchayat, first respondent herein was already withdrawn once again the very same incompetent authority has issued the present impugned proceedings without resorting to the provision under Section 131(2) of the Tamil Nadu Panchayat Act, 1994.

2.The learned Special Government Pleader also submitted that the Executive Officer/first respondent herein had also requested the jurisdictional Tahsildar to initiate appropriate proceedings against the petitioner and finding no response, he was under compulsion to issue the present impugned proceedings. As this Court has maintained in its order dated 27.08.2018 that notice will be issued under Section 131(2) of the Tamil Nadu Panchayat Act, 1994 granting liberty to proceed against the petitioner under Section 131(2) of the Tamil Nadu Panchayat Act, 1994, the Writ Petition stands disposed of and the impugned order is set aside and the Tahsildar was given liberty to proceed against the petitioner and it has to be done within a period of two weeks as the petitioner has encroached into the Ooruni/Water body.

3.For convenience Section 131(2) of the Tamil Nadu Panchayat Act, 1994 is extracted as under:
?131.Prohibition against obstructions in or over public roads, etc., ~
(1) ....
(2) It shall be the duty of the Village Administrative Officer of every revenue village to report on encroachments on properties vested in Village Panchayats or Panchayat Union Councils to the Executive Authority or the Commissioner concerned and to the officer of the Revenue Department, and it shall be the duty of the Executive Authority or the Commissioner concerned either suo motu or on obtaining a report from the Village Administrative Officer in this regard to institute proceedings under this Act and secure the removal of the encroachments within such time as may be specified by the Government by general or special order. If the removal of the encroachments has not been secured within the period specified in such order, the officers of the Revenue Department shall institute proceedings under the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905) and secure such removal.?

4.A perusal of Section 131(2) of the Tamil Nadu Panchayat Act, 1994, shows that two authorities can proceed against any encroacher. Firstly, the Village Administrative Officer of every revenue village to report on

encroachments on properties vested in Village Panchayat or Panchayat Union Councils to the Executive authority or the Commissioner concerned and to the officer of the revenue department. Secondly, it shall be the duty of the Executive Authority or the Commissioner concerned either suo motu or on obtaining a report from the Village Administrative Officer in this regard to institute proceedings under this Act and then to secure the removal of the encroachment within such time. Thirdly, if the removal of encroachment has not been secured within the period as may be specified by the Government by general or special order, the Officer of the revenue department shall institute proceedings under the Tamil Nadu Land Encroachment Act, 1905. Since Section 131 corresponds to Section 82 of the 1958 Act, this Court also in a reported judgment in 1970 (II) MLJ 552 while dealing with Section 131 of the Tamil Nadu Panchayat Act, 1994 held that unauthorised encroachment is a continuing offence within the meaning of Section 166 of the Tamil Nadu Panchayat Act, 1958 and the Executive Authority has a right to take steps within 12 months from the commencement of the offence and secure encroachment. Therefore, we direct the Executive Officer, Thenkarai Town Panchayat, Theni District/first respondent herein to initiate action against the petitioner by issuing proceedings under Section 131(2) of the Tamil Nadu Panchayat Act, 1994 and proceed further for removal of encroachment within a period of three months.

5.At this stage, the learned Counsel appearing for the petitioner submitted that direction may be given to the respondents to issue fresh notice. But we are not inclined to accept such request and this Court direct both the petitioner and the first respondent to treat the present impugned notice as one issued under Section 131(2) of the Tamil Nadu Panchayat Act, 1994 and the petitioner is given two weeks time to give his explanation. On receipt of such explanation, the Executive Officer, Thenkarai Town Panchayat, Theni District, first respondent herein is directed to proceed under Section 131(2) of the Act for passing final order within a period of three weeks thereafter.

6.With the above direction, this Writ Petition is disposed of. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

To

The Executive Officer,
Thenkarai Town Panchayat,
Theni District.